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Roden v. K & K Land Management, Inc., 368 So. 2d 588 (Fla. 1978)

James H. Burgess, Jr.

CASE COMMENTS

Ad Valorem Taxation—AGRICULTURAL CLASSIFICATIONS—THE CONTINUING PREFERENTIAL TAX TREATMENT ACCORDED THE FLORIDA LAND SPECULATOR—*Roden v. K & K Land Management, Inc.*, 368 So. 2d 588 (Fla. 1978).

K & K Land Management, Inc. (K & K), a corporation organized under the laws of Florida and authorized to do business in Florida, purchased approximately 575 acres of land in December 1972. Most of the land in question had been farmed as an orange grove for approximately twenty years prior to the purchase. Approximately twenty-five acres of the property were developed into an amusement park known as Circus World, while the remainder of the land was held for future development.[1] Heller Brothers Packing Co. maintained this undeveloped portion as an orange grove.[2] They sprayed, cultivated, disced, and pruned, and twice a year fertilized the property. However, the property was not irrigated and there had been no replanting or resetting of trees.[3] Heller Brothers paid K & K a flat fee of $40,000 per year.[4]

K & K purchased the property for approximately $5,500,000, or $9,000 per acre.[5] This price was roughly six times the assessed agricultural value of the property,[6] and therefore triggered the mechanics of section 193.461(4)(c), Florida Statutes.[7] Pursuant to this

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1. Brief of Appellants at 4, Roden v. K & K Land Management, Inc., 368 So. 2d 588 (Fla. 1978). The land was located near Interstate 4 and Highway 27. Appellant's brief states that the property was purchased for the ultimate development of a large family entertainment park. K & K, a wholly owned subsidiary of Circus World admits this, but claims there are no present plans for development of the land.

2. *Id.* at 5. Heller Brothers Packing is a company from Winter Garden, Florida, that packages produce and manages orange groves for other people.

3. Respondent's Brief on the Merits Subsequent to Order Allowing Certiorari at 6. K & K claimed that no replanting or resetting was done because there were nematodes in the grove and K & K was attempting to establish the boundaries of the infestation. Mr. Kazaros, the main witness for respondent and an employee of Heller Brothers, also claimed that the company did not take less care of this property than any other citrus property they were managing.

4. *Id.* at 4. When the property was initially purchased the actual arrangement was for K & K and Heller Brothers to split the net proceeds, after expenses, from the sale of the crops with 40% going to K & K and 60% going to Heller Brothers. The land was never under lease.

5. Brief of Appellants at 4.

6. *Id.* at 6. The agriculturally assessed value of the property was approximately $1,600 per acre.

7. (1977). Section 193.461(4)(c) provides:

> Sale of land for a purchase price which is three or more times the agricultural assessment placed on the land shall create a presumption that such land is not used primarily for bona fide agricultural purposes. Upon a showing of special circum-

subsection, if property is purchased for over three times its agriculturally assessed value, a presumption arises that the property is no longer being held for bona fide agricultural purposes; therefore, unless the presumption is rebutted by the landowner, the property would not be entitled to the preferential tax treatment of an assessment below just value under the greenbelt law[8]—an agricultural classification.

James Roden, Tax Assessor of Polk County, denied K & K an agricultural classification on its property since the purchase price for a strictly commercial grove operation would have been no more than $3,000 per acre.[9] Roden believed the large premium paid by K & K was indicative of an intent not to use the property for a good faith commercial agricultural purpose, but rather to hold the property for speculative reasons. Roden also noted that in view of the purchase price of the property there could be no reasonable expectation of K & K making the agricultural enterprise profitable either at that time or in the near future.[10] Roden concluded that the statutory three times presumption was not rebutted as there was no bona fide agricultural use of the property. Consequently, preferential tax treatment was denied. K & K challenged this denial and the circuit court declared the statute unconstitutional.[11] The Florida Supreme Court reversed this decision and found the three times presumption to be constitutional.[12]

After the constitutional issue had been decided by the supreme court and the case had been remanded to the circuit court for a final determination on the merits, the circuit court held that the lands in question were being used primarily for bona fide agricultural purposes as defined in subsection (3)(b) of the greenbelt law.[13] Con-

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stances by the landowner demonstrating that the land is to be continued in bona fide agriculture, this presumption may be rebutted.

8. FLA. STAT. § 193.461 (1977).

9. Brief of Appellants at 6.

10. *Id.* at 5. K & K had mortgaged the property for approximately $3,000,000. At an interest rate of 6%, K & K's annual interest payment of $180,000 far exceeded the $40,000 in annual revenue from the property.

11. K & K Land Management, Inc. v. Roden, No. GC-G-73-1905 (Fla. 10th Cir. Ct. Oct. 3, 1974), *rev'd sub nom.* Straughn v. K & K Land Management, Inc., 326 So. 2d 421 (Fla. 1976). In separate actions K & K had challenged both the 1973 and 1974 tax assessments. Both cases were initially styled K & K Land Management, Inc. v. Roden. In appealing the 1973 decision, the Department of Revenue inadvertently styled the case Straughn v. K & K Land Management, Inc. When the two cases were subsequently consolidated for determination on the merits by the supreme court, the case was styled Roden v. K & K Land Management, Inc.

12. Straughn v. K & K Land Management, Inc., 326 So. 2d 421 (Fla. 1976).

13. K & K Land Management, Inc. v. Roden, No. GC-G-73-1905 (Fla. 10th Cir. Ct. May 3, 1976), *aff'd sub nom.* Straughn v. K & K Land Management, Inc., 342 So. 2d 1107 (Fla. 2d Dist. Ct. App. 1977), *aff'd sub nom.* Roden v. K & K Land Management, Inc., 368 So. 2d

sequently, such lands were qualified for an agricultural classification and thus entitled to preferential tax treatment. Roden subsequently appealed this decision to the Second District Court of Appeal of Florida. The second district affirmed the circuit court's decision without opinion.[14] In reaching the same decision in a second case, the second district stated that agricultural use of land alone was sufficient to entitle K & K to an agricultural classification.[15] The Florida Supreme Court affirmed the decisions of the lower courts.[16]

Prior to 1972, the greenbelt law did not contain the three times presumption or the definition of bona fide agricultural use as a good faith commercial agricultural use.[17] At that time, even if land had been purchased for speculative purposes and no profit could be realized from the agriculture, the landowner could still receive the preferential tax treatment of an agricultural classification since the only requirement was an agricultural use of the property.[18] Conse-

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588 (Fla. 1978). FLA. STAT. § 193.461(3)(b)(1977) provides:

> Subject to the restrictions set out in this section, only lands which are used primarily for bona fide agricultural purposes shall be classified agricultural. "Bona fide agricultural purposes" means good faith commercial agricultural use of the land. In determining whether the use of the land for agricultural purposes is bona fide, the following factors may be taken into consideration:
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> 1. The length of time the land has been so utilized;
> 2. Whether the use has been continuous;
> 3. The purchase price paid;
> 4. Size, as it relates to specific agricultural use;
> 5. Whether an indicated effort has been made to care sufficiently and adequately for the land in accordance with accepted commercial agricultural practices, including, without limitation, fertilizing, liming, tilling, mowing, reforesting, and other accepted agricultural practices;
> 6. Whether such land is under lease and, if so, the effective length, terms, and conditions of the lease; and
> 7. Such other factors as may from time to time become applicable.

14. Straughn v. K & K Land Management, Inc., 342 So. 2d 1107 (Fla. 2d Dist. Ct. App. 1977), *aff'd sub nom.* Roden v. K & K Land Management, Inc., 368 So. 2d 588 (Fla. 1978).

15. Straughn v. K & K Land Management, Inc., 347 So. 2d 724, 726 (Fla. 2d Dist. Ct. App. 1977), *aff'd sub nom.* Roden v. K & K Land Management, Inc., 368 So. 2d 588 (Fla. 1978).

16. Roden v. K & K Land Management, Inc., 368 So. 2d 588 (Fla. 1978).

17. Ch. 72-181, § 1, 1972 Fla. Laws 571 (current version at FLA. STAT. § 193.461(4)(c) (1977)) did not apply to ad valorem assessments until after December 31, 1972. After the passage of the 1972 amendments, which added the three times presumption and the definition of bona fide agricultural use as a good faith commercial agricultural use to the greenbelt law, several district court decisions required a reasonable expectation of a profitable agricultural enterprise before an agricultural classification could be granted. *See, e.g.*, First Nat'l Bank v. Markham, 342 So. 2d 1016 (Fla. 4th Dist. Ct. App. 1977); Markham v. Nationwide Dev. Co., 349 So. 2d 220 (Fla. 4th Dist. Ct. App. 1977). The second district in *Straughn* held that use was still the determinative factor in acquiring preferential tax treatment. This created the conflict which allowed the Supreme Court of Florida to take jurisdiction in *Roden*.

18. *See, e.g.*, Conrad v. Sapp, 252 So. 2d 225 (Fla. 1971); Greenwood v. Oates, 251 So. 2d 665 (Fla. 1971).

quently, many land speculators were able to acquire the preferential tax treatment of an agricultural classification. The 1972 amendment to the greenbelt law created the confusion that has culminated in *Roden v. K & K Land Management, Inc.* This law added the three times presumption and the definition of bona fide agricultural use to the greenbelt law making it more difficult to qualify for an agricultural classification. The definition lists criteria that should be examined in deciding if land has a bona fide agricultural use, and the three times presumption puts up a red flag to the granting of an agricultural classification. Because the greenbelt law, prior to 1972, was such a favorable tax shelter for land speculators, the amendments to the statute seem to be an attempt by the legislature to narrow the scope of agricultural classifications, thereby preventing abuse of the statute by speculators.[19]

The passage of these amendments to the greenbelt law also prompted the promulgation of rule 12D-5.01, Florida Administrative Code.[20] This rule requires that there be a reasonable expectation

19. A memorandum of the House of Representatives Committee on Finance and Taxation, the committee that wrote chapter 72-181, explains the intent of the amendments. Although this memorandum was written in January of 1978, it does have some probative value since it was written to counteract apparent efforts to lobby against this statute. The memorandum states:

> The law was also designed to *prevent* persons from purchasing lands for speculative purpsoes [*sic*], either wholely [*sic*] or partially, and receiving special tax treatment through a temporary or short term farming operation.
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> . . . There is *no* distinction between a bona fide commercial agricultural operation and an agricultural operation which earns a fair return on investment. The absence of a fair return indicates that the owner has invested in the property for reasons beyond or supplemental to farming. . . . It is by virture [*sic*] of the future speculative return on the land investment that a person can continue farming without a fair return. Going through the motions of farming is insufficient grounds to qualify for greenbelt assessment under current law. The Department's rule [Rule 12D-5.01, Florida Administrative Code] does not go beyond the law, but properly impliments [*sic*] it.
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> It is evident, then, that most of Florida's agricultural land, bona fide or otherwise, is assessed at unrealistically low levels. Because assessments are so low, many of the sales of land for even bona fide agricultural purposes exceed three times the assessment.
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> . . . Because a bona fide commercial agricultural operation will *always* be eligible for agricultural classification under current law, the three-times-value presumption is merely a mechanism for reviewing the accuracy of agricultural assessments.

Fla. H.R., Committee on Finance and Taxation, Staff Analysis at 6-10 (Jan. 1978) (emphasis in original).

20. Rule 12D-5.01(2) states:

> Good faith commercial agricultural use of property is defined as the pursuit of an agricultural activity for a reasonable profit or at least upon a reasonable expectation of meeting investment cost and realizing a reasonable profit. The profit or reasonable expectation thereof must be viewed from the standpoint of the fee owner and measured in light of his investment.

of meeting the expenses of the property and making a profit from the agriculture before there can be a good faith commercial agricultural use of property. This rule appears to complement the intent of the amendments. However, the decision in *Roden* appears to directly oppose the logic of the statutory changes and the promulgation of this rule.

The issue in *Roden,* as stated by the supreme court, was whether more than mere use was necessary to establish a bona fide agricultural operation for purposes of preferential tax treatment.[21] In direct opposition to the apparent legislative intent behind the 1972 amendments to the greenbelt law and rule 12D-5.01, the court held that use was, and should be, the overriding consideration in classifying land for agricultural purposes;[22] therefore, the three times presumption had been rebutted in this case.

To support the decision in *Roden,* the supreme court relied on its prior decision in *Straughn v. Tuck*.[23] However, such reliance seems to be inappropriate. The issue presented for decision in *Tuck* was confined solely to the question of whether the physical state of the taxpayer's land, rather than active "use" to some degree for agricultural purposes, was the test for agricultural classification under article VII, section 4, Florida Constitution and section 193.461(3)(b), Florida Statutes.[24] The property in question in *Tuck* was in its natural state with no evidence of any type of farming operations.[25] The supreme court stated that use was still the guidepost in classifying land[26] and, since the land in *Tuck* was not being used for any agricultural purpose, the agricultural classification was not allowed.[27] When confined to the issue of whether there must be some degree of agricultural use of the land in order to receive an agricultural classification, *Straughn v. Tuck* is a correct statement of the law. However, the decision in *Tuck* should not be considered as authority to resolve the additional question presented in *Roden* of whether there must be something more than mere physical agricultural use.[28]

The question of whether the legislature may define the nature of the use required for agricultural classification to be more than merely physical agricultural activity had been decided by the supreme court prior to *Tuck* in *Straughn v. K & K Land Management,*

21. *Roden,* 368 So. 2d at 589.
22. *Id.*
23. 354 So. 2d 368 (Fla. 1977).
24. *Id.* at 370.
25. *Id.* at 371.
26. *Id.* at 370.
27. *Id.* at 372.
28. *Roden,* 368 So. 2d at 589.

Inc.[29] The court in *Straughn* held the three times presumption contained in section 193.461(4)(c) constitutional because it affected only the classification of property, not its assessment.[30] Therefore, even though the Florida Constitution requires that land be assessed solely on the basis of character or use,[31] section 193.461, Florida Statutes, relates solely to agricultural classification of property and not assessment. The legislature is constitutionally empowered to restrict the classification criteria to more stringent standards than mere physical use of the land.[32] The supreme court thus has expressly upheld the right of the legislature to define land for purposes of agricultural classification as something more than land merely devoted to physical agricultural activity. Specifically, it has upheld the right of the legislature to limit the definition of agricultural land to land devoted to good faith commercial agricultural use of the land. In determining whether land is in fact being used for bona fide agricultural purposes, the court in *Straughn* held that other factors listed in section 193.461(3)(b) can be taken into consideration.[33]

The court in *Straughn* also recognized the nexus between investment price and expected return from agricultural activities inherent in the concept of commercial agricultural use.[34] The statutorily created three times presumption was found to be rational in *Straughn* because land purchased for three times its assessed value could not be considered as being put to a good faith commercial agricultural use since the purchaser could not expect an annual return from agricultural activities sufficient to meet investment costs and return a profit similar to that which an investor could expect from other commercial enterprises with similar risks, liquidity, degree and level of management.[35] Following *Straughn,* several appellate courts in Florida have stated that entitlement to agricultural classification

29. 326 So. 2d 421 (Fla. 1976).

30. The supreme court addressed the constitutional challenge and held:

> Nor are we persuaded that the challenged statute is unconstitutional under Article VII, section 4(a), Florida Constitution, which provides that "agricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and assessed solely on the basis of character or use." It is alleged that the statutory presumption impinges upon the nature of the assessment authorized by the Constitution. We conclude, however, that the challenged statutory language affects only the *classification* of purportedly agricultural property, not its assessment.

Id. at 424 (emphasis in original).

31. FLA. CONST. art VII, § 4(a) provides that "[a]gricultural land or land used exclusively for non-commercial recreational purposes may be classified by general law and *assessed solely on the basis of character or use.*" (emphasis added).

32. *See Straughn,* 326 So. 2d at 424.

33. *Id.*

34. *Id.*

35. *Id.*

depends upon more than mere physical agricultural activity on the land.[36] These courts recognize that good faith commercial agricultural use is the test under current statutory law, and that this test requires "at least a reasonable expectation of meeting investment cost and realizing a reasonable profit."[37]

The holding in *Tuck* that use is still determinative, and the holding in *Straughn* that use does not have to be the sole basis for an agricultural tax classification, can be reconciled. However, when these cases are made logically consistent, the decision reached in *Roden* is incorrect. In *Tuck* there was absolutely no agricultural use of the property. This was held to be a sufficient basis to deny the agricultural classification.[38] The supreme court stated in *Tuck* that use was the guidepost and determinative in classifying land.[39] When these statements are analyzed in context with the facts of the case, it becomes apparent that some degree of agricultural use of property is necessary before an agricultural classification can be granted. Land in its natural state is simply not a sufficient agricultural use. Because *Straughn* holds that use does not have to be the sole basis for agricultural classifications, and is cited in *Roden* as a correct statement of the law, it is rational to conclude that other factors can be examined when determining if an agricultural classification is warranted.[40] If other factors can be examined, as stated in *Straughn,* the issue then becomes the degree of active agricultural use that is necessary to entitle land to an agricultural classification.

The three times presumption was considered rational in *Straughn* because a fair return from the agricultural activity could not be made in light of the high purchase price; therefore, it is logical to conclude that a rebuttal of the presumption would require at least some showing of a future expectation of a fair return. Although in *Tuck* the supreme court stated that agricultural classifications could not be limited to profitable enterprises,[41] there was no showing by K & K that there would ever be any chance of them earning a fair return on their investment from the agriculture.[42] In fact, the

36. *See, e.g.,* Markham v. Nationwide Dev. Co., 349 So. 2d 220, (Fla. 4th Dist. Ct. App. 1977); First Nat'l Bank v. Markham, 342 So. 2d 1016 (Fla. 4th Dist. Ct. App. 1977). The Florida Supreme Court in *Roden* disapproved of *Nationwide* but did not expressly overrule it.

37. Markham v. Nationwide Dev. Co., 349 So. 2d 220 (Fla. 4th Dist. Ct. App. 1977).

38. *Tuck,* 354 So. 2d at 371.

39. *Id.* at 370.

40. *See Straughn,* 326 So. 2d at 424.

41. 354 So. 2d at 371.

42. Brief of Appellants at 14. The Department of Revenue was not trying to limit agricultural classifications strictly to profitable enterprises. All the Department wanted, which K & K could not and did not show, was evidence that from all the circumstances there was at

purchase price was so high that the return K & K was receiving was not sufficient to defray even one quarter of the interest expense from the mortgage on the property.[43] This, coupled with the fact that K & K admitted that it was planning on developing the property in the future,[44] seems to logically dictate that K & K's degree of active agricultural use of the property was not sufficient to call it a bona fide agricultural operation. Since there was no proof that K & K could make a fair return from the farming activities either at that time or in the future, the agricultural use appears to be nothing more than a method of defraying the costs of holding the property until a future speculative return could be realized. The lower tax assessment allows K & K to further minimize the holding cost of the property.

In *Tuck* the supreme court held that the tax assessor could assign appropriate weights to the different factors used in arriving at a just value for the assessment of property.[45] It would be totally consistent with *Tuck*, therefore, to allow the assignment of weights to the different factors used in classifying land. The above economic factors seriously contradict the conclusion that the property had a bona fide agricultural use, especially when the rational intent behind the three time presumption is considered. It is only logical that these factors should be weighted more heavily by the tax assessor than the simple actual agricultural use of the property. If use is the guidepost but not the sole basis for an agricultural classification, which the supreme court in *Roden* held to be the correct statement of the law, the above analysis of the decisions in *Tuck* and *Straughn* logically dictates that the opposite result should have been reached in *Roden*. The degree of actual agricultural use was simply not sufficient to overcome the presumption against a bona fide agricultural use in light of the overwhelming economic factors. By allowing K & K the preferential tax treatment of an agricultural classification under these facts, the supreme court has put an overpowering emphasis on simple agricultural use when resolving whether an agricultural classification should be granted for property.

The state of the law in this area has been further confused by the court's failure in *Roden* to overrule *Markham v. Nationwide Development Co.*[46] It is impossible to reconcile *Nationwide* with *Roden*,

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least a reasonable expectation of making a fair return in the future. Consequently, the Department's position was not contrary to the holding in *Tuck*.

43. Brief of Appellants at 5.

44. *Id.* at 4.

45. 354 So. 2d at 371.

46. 349 So. 2d 220 (Fla. 4th Dist. Ct. App. 1977). It should be noted that there was a strong dissent in *Roden* authored by Justice Alderman and concurred in by Justices England and

since *Nationwide* squarely held that more than mere agricultural use was necessary to entitle land to an agricultural classification and that there must be some showing of a reasonable expectation of meeting investment costs and realizing a reasonable profit.[47]

By upholding the district court, the supreme court has sanctioned the tax shelter which the legislature was trying to remove from the greenbelt law by the passage of the 1972 amendments. The district court stated that agriculture could be used to help carry the costs of the land or reduce the investment until such time as the full speculative profits could be realized. The court also stated that actual use was all that was necessary to acquire an agricultural classification.[48] This decision seems to conflict with the logical purpose behind the 1972 amendments to the greenbelt law; however, the supreme court has affirmed it as the correct statement of the law. By holding as it did, the supreme court has left the way open for land speculators to continue acquiring preferential tax treatment by simply using the property for agricultural purposes. This not only appears to be contrary to the intent behind the 1972 amendments, but it also allows land speculators to reap huge profits on the sale of land, as holding costs are minimal. Because the land speculators are not paying their proportionate share of taxes, the tax burden is shifted to the rest of the community. This is an untenable result.

Perhaps one of the reasons the supreme court held as it did was the lack of hard rebuttal of K & K's contentions concerning the seven criteria listed in the greenbelt law for deciding whether there is a bona fide agricultural use.[49] The Department of Revenue's position, supported by several district court decisions, was that profit motive was the deciding factor, and it did tend to overlook the other aspects of the greenbelt law.[50] The Department of Revenue must have felt that the purpose of the 1972 amendments to the greenbelt law was so obvious that it needed only to stress the economic factors

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Sundberg which cited *Nationwide* as the correct statement of the law. These justices felt that since there was no showing by K & K that it paid less than six times the agriculturally assessed value of the grove and no proof that K & K had a reasonable expectation of meeting investment costs and making a reasonable profit from the agriculture, the facts could not sustain a holding that the three times presumption was rebutted. They felt that to hold otherwise would unfairly shift the tax burden from K & K to the overall community. *Roden*, 368 So. 2d at 590.

47. 349 So. 2d at 222.

48. *Straughn*, 347 So. 2d at 726. The second district's decision in this case appears to be somewhat in conflict with its decision in Walden v. Tuten, 347 So. 2d 129 (Fla. 2d Dist. Ct. App. 1977). In *Walden* the district court remanded the case for the lower court to consider the commercial use aspect. It seemed the district court put more emphasis on commercial agricultural use in *Walden* than in its decision in *Straughn*.

49. FLA. STAT. § 193.46(3)(b) (1977).

50. Brief of Appellants at 4-16.

in order to prevail. Another possible reason for the decision could be the absence of amicus curiae briefs filed on behalf of the Department of Revenue. If several cities and counties had submitted such briefs supporting the Department of Revenue's position and explaining the impact of an adverse ruling, the supreme court may have ruled differently. Amicus curiae briefs were filed on behalf of K & K by large landowning companies and may have been enough to persuade the court that K & K's interest was more substantial than that of the Department of Revenue.[51]

Since the law in this area still needs clarification, the supreme court may decide to distinguish future cases on the facts and hold differently if its opinion on the greenbelt law is changed. After the decision in *Roden,* it appears that the law has come full circle since the passage of the 1972 amendments to the greenbelt law. Actual agricultural use was and still is the test for acquiring the preferential tax treatment of an agricultural classification. Consequently, the three times presumption, along with the restrictive definition of bona fide agricultural use, has been rendered ineffective in the fight against speculator abuse of the greenbelt law.

JAMES H. BURGESS, JR.

51. Amicus curiae briefs were filed on behalf of K & K by First Mississippi Corporation and CF Mining Corporation.